Supreme Court, U. S.
FILED
JAN 17 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

FALL TERM 1979

NO. 79-990

GORDON MC LEAN CAMPBELL,

Petitioner,

vs.

DISCIPLINARY BOARD,
WASHINGTON STATE BAR ASSOCIATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Counsel for respondent

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QUESTION PRESENTED FOR REVIEW

Where an attorney has been transfered to inactive status for mental incapacity, is he constitutionally entitled to a hearing on a petition for reinstatement which fails to allege or make any showing of restoration of his mental capacity?

STATEMENT OF THE CASE

On August 15, 1968, petitioner Gordon McLean Campbell was involuntarily transfered to inactive status as an attorney in the State of Washington by order of the Washington Supreme Court. In re Campbell, 74 Wash.2d 276, 444 P.2d 784 (1968), cert. denied, 394 U.S. 323, 89 S.Ct. 1207, 22 L.Ed.2d 310 (1969). In entering this order, the court ruled that Mr. Campbell should remain on the inactive list "until such time as he can establish that he is again mentally competent to practice law." 444 P.2d at 787.

On July 9, 1979, Mr. Campbell filed a petition for reinstatement as an active member of the Bar Association. See the Petition, Appendix C. His reinstatement petition contained not even a bare allegation that he now had the mental capacity to represent clients.

Washington Discipline Rules for Attorneys, Rule 4.2 (Petition, Appendix B, pp. B7-8), normally require a hearing upon a petition for reinstatement after involuntary transfer to inactive status. However, the Disciplinary Board reviewed Mr. Campbell's purported petition for reinstatement and determined that, on its face, that petition contained no assertion of restoration of mental capacity, and therefore presented no

issue upon which a hearing could be held. Accordingly, the Board ordered that no further action should be taken on that petition. Petition, Appendix F.

Mr. Campbell appealed the Board's decision to the Washington Supreme Court. On September 21, 1979, the Court Commissioner entered an order approving the Board's decision. Petition, Appendix A. Mr. Campbell moved the court to modify the Commissioner's ruling, Petition, Appendix G, and the Chief Justice affirmed the Commissioner's ruling, Petition, Appendix H. This petition followed.

ARGUMENT

The Supreme Court of Washington has ruled that before Gordon Campbell can be reinstated to the active practice of law in Washington, he must establish that he is again mentally competent to practice law. Mr. Campbell cannot, and does not, challenge that ruling, which has been in effect for more than eleven years. Instead he claims a constitutional right to a hearing on a petition for reinstatement which makes no mention of his current mental capacity, and contains no allegation or showing that he is now mentally competent to practice law.

Due process may very well generally require a hearing on a reinstatement petition; in any case, Washington court rules require such a hearing. But neither constitutional due process, nor the Washington rule as interpreted by its Supreme Court, require a hearing when no issue exists. Since Mr. Campbell must show his restoration of mental competence prior to being reinstated to the active practice of

law, and since he has failed even to allege his present mental competence, no material disputed facts exist upon which a hearing could be held.

The case of Federal Power Comm'n v. Texaco, Inc., 377 U.S. 33, 84 S.Ct. 1105, 12 L.Ed2d 112 (1964), contains a similar fact pattern. The issue involved was a natural gas supplier's right to a hearing on an application for public convenience and necessity. Although the law provided that the Commission "shall set" such applications for hearing, in this case the application was rejected without a hearing because it showed non-compliance with rules of the Commission on its face. This Court agreed that a hearing was not required since it could serve no purpose.

The case of Wilson v. Wilson, 416 F. Supp. 984(D.Or. 1976)(3-judge court) is also similar. In that case, an application for the Oregon bar examination was summarily rejected because of defects which appeared on its face. The would-be lawyer claimed that he had been denied procedural due process, since he had never been granted a hearing on refusal to be seated for the bar. The court found that the state could legitimately refuse to process an application which itself showed that the applicant did not meet admission requirements, and that neither due process nor equal protection would require a hearing in such a case.

In another case, Wilson v. Board of Governors, 90 Wash.2d 649, 585 P.2d 136 (1978), cert denied, 440 U.S. 960, 99 S.Ct. 1503 (1979), a bar applicant claimed a right to a hearing on his application to sit for the bar examination. The application on its face showed that he did not

have the legal education required of such an applicant. The Washington Supreme Court held that due process requires an adversary hearing only when disputed facts exist. This Court denied certiorari.

Since the first rejection of his petition, Mr. Campbell has been free to resubmit a petition containing allegations regarding his present mental status. Until the Disciplinary Board of the Washington State Bar Association is presented with such allegations, there is no issue upon which a hearing can or should be ordered. Accordingly, the present petition contains no federal issue of substance, and should be denied.

CONCLUSION

Since Gordon Campbell's petition for writ of certiorari does not present any federal question of substance, respondent Disciplinary Board, Washington State Bar Association, respectfully requests that the petition be denied.

DATED this 15th day of January, 1980.

Respectfully submitted,

Robert T. Farrell
Counsel for respondent